

REMARKS

I. INTRODUCTION

Claims 1-3 and 5-6 are currently pending in the present application. Claims 1-3 and 5-6 have been rejected under 35 U.S.C. § 103(a). In view of the following remarks, Applicants respectfully submit that the pending claims are in condition for allowance.

II. REJECTIONS UNDER 35 U.S.C. §103 (a)

Claims 1-3 and 5-6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,254,956 ("Kjellqvist *et al.*") in view of U.S. Patent No. 5,571,588 ("Lussi *et al.*"). Applicants respectfully submit that these rejections should be withdrawn for at least the following reasons.

In our view, Kjellqvist *et al.* is not prior art under 35 U.S.C. § 102 with respect to the present application. It is respectfully submitted that the earliest effective date of Kjellqvist *et al.* which the Examiner may use for prior art purposes as a patent or a printed publication under 35 U.S.C. § 102(a) or § 102(b) is the date of the patent, July 3, 2001. Furthermore, it is also respectfully submitted that the earliest effective date of Kjellqvist *et al.* which the Examiner may use as a patent for prior art purposes under 35 U.S.C. § 102(e) (pre-AIPA, as the international application was filed on June 26, 1997 (*see* M.P.E.P. § 2136)) is March 2, 1999, as indicated on the face of the patent. However, the present application was

filed in the United States on April 12, 2001, it claims priority under 35 U.S.C. § 120 to the filing of the parent U.S. application no. 09/344,975 filed on June 28, 1999, and it also claims foreign priority under 35 U.S.C. § 119 to the filing of the German application no. DE P 19831509.0 filed in Germany on July 14, 1998. Therefore, because the July 3, 2001 date of Kjellqvist *et al.* under 35 U.S.C. § 102(a) is not prior to the July 14, 1998 effective filing date of the present application, it is respectfully submitted that Kjellqvist *et al.* does not constitute prior art to the present application under 35 U.S.C. § 102(a). Furthermore, because the July 3, 2001 date of Kjellqvist *et al.* under 35 U.S.C. § 102(b) is not more than one year prior to the June 28, 1999 effective U.S. filing date of the present application, it is respectfully submitted that Kjellqvist *et al.* does not constitute prior art to the present application under 35 U.S.C. § 102(b). In addition, because the March 2, 1999 date of Kjellqvist *et al.* under 35 U.S.C. § 102(e) is not prior to the July 14, 1998 effective filing date of the present application, it is respectfully submitted that Kjellqvist *et al.* does not constitute prior art to the present application under 35 U.S.C. § 102(e).

Accordingly, it is respectfully submitted that Kjellqvist *et al.* does not constitute prior art under 35 U.S.C. § 102 with respect to the present application. Therefore, Applicants respectfully submit that the § 103 rejections of claims 1-3 and 5-6 based on Kjellqvist *et al.* should be withdrawn.

III. CONCLUSION

Applicants respectfully submit that the pending claims are in condition for allowance and requests that such action be taken. If for any reason the Examiner believes that prosecution of this application would be advanced by contact with the Applicants' attorney, the Examiner is invited to contact the undersigned at the telephone number given below.

Respectfully submitted,

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